

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.**

SUMMONS FOR JUDGMENT NO.106 OF 2007
IN
SUMMARY SUIT NO.2728 OF 2006

Vijaya Bank. ...Plaintiff.
Vs.
Munshiram N.Chataule & Ors. ...Defendants.

....
Mr. Santosh R. Shetty for the Plaintiff.
Mr. M. M. Shetty for the Defendants.
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CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The claim in the Summary Suit is based on a Demand Promissory Note executed by the First Defendant and a letter of guarantee executed by the Second and Third Defendants. A Demand Promissory Note was in the amount of Rs.1 lakh and was to carry an interest at the rate of 1% per annum over the prime lending rate of interest, which on the date on which the Promissory Note was executed (24th October 2003) was 11.5% per annum. On 30th January 2006, the Plaintiff issued a notice of demand to which there was no reply. An amount of Rs.10,000/- has been paid after the Summons for Judgment was instituted. In the meantime, the Fourth Defendant executed a letter dated 9th March 2007 admitting

his liability to pay the outstanding amount of the loan. A copy of the letter has been placed on the record.

At the hearing of the Summons for Judgment, it has been urged on behalf of the Defendants that the letter of the Plaintiff dated 30th January 2006 stated that the Plaintiff is entitled to recall the amount of the loan but, as a matter of fact that the loan was not recalled. The Summary Suit is, therefore, asserted as not maintainable. There is no merit in the defence.

Para 4 of the plaint specifically records that there were several defaults in the repayment as agreed, with the result, that the Plaintiff was entitled to recall the entire outstanding amount together with over due interest. In these circumstances, the Plaintiff called upon the Defendants to pay the entire outstanding amount together with interest. The notice dated 30th January 2006 met the requirement of recalling the loan, in view of the default committed by the Defendants.

There is absolutely no valid or tenable defence to the claim in the suit. The execution of the Promissory Note and the

letter of guarantee is not denied. The disbursal of the loan has not been denied. There is no denial of the fact that there was a default in the payment of installments. In fact, an amount of Rs.10,000/- has been paid after the institution of the Summons for Judgment acknowledging the liability.

In the circumstances, the suit shall stand decreed as prayed, with a modification that the Plaintiff would be entitled to interest at the rate of 12% per annum from the date of the suit, until payment or realisation. The Defendants would be entitled to due credit of the amount of Rs.10,000/- which has been paid on 9th March 2007.

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